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WHAT IS FERPA AND WHY ARE PEOPLE ANXIOUS ABOUT CHANGES?

There are two—somewhat different—FERPA (Family Education Rights and Privacy Act) laws that protect student records and student and family privacy in different ways. The federal law (34 CFR Part 99) provides definitions, information and appropriate protection for student records maintained by public education institutions (public schools). Federal FERPA:

- requires school districts and charter schools to annually provide notice to parents of the schools' definition of student "directory information,"
- allows parents to direct schools not to release their students' directory information,
- requires student records to be equally available to both custodial and non-custodial parents,
- allows schools to release student information to other public education entities as students progress through the public education system, pre-K through post-secondary programs,
- allows schools to provide *de-identified* student data to researchers and auditors—to evaluate programs and to improve instruction, and
- allows schools in limited, specif-

ic circumstances to allow access to student information without written parental consent.

The Department of Education made amendments to federal FERPA, effective January 3, 2012. The changes were NOT significant; they were actually helpful for educators and even public education critics who compare student achievement in specific settings, in specific areas and from one assessment period to the next. But the amendments have generated discussion and angst. To summarize, the changes allow (do not require) public schools to share student information more readily from pre-K through post-secondary programs; allow researchers—only with specific written agreements—to use and analyze *de-identified* student data for public schools; and allow public schools to require students to have ID badges or cards that display student ID numbers *only if* the ID numbers must be used with a password or PIN to access student information.

Some school districts amended their district policies to reflect the changes in federal regulations. The

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MAY BOARD ACTION

The State Board of Education revoked the license of Monte Gibson for viewing inappropriate sexually oriented materials using school equipment and during contract hours.

Devin Tucker's license was suspended as a result of her testing positive for marijuana and amphetamines.

The license of Daniel Shumway was suspended as a result of him drinking alcohol on the private school campus where he was teaching before and during the school day.

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policies that our office reviewed demonstrate thoughtful, minimal changes that allow for researchers to better analyze *de-identified* student data and allow schools to improve instruction by sharing and analyzing student progress and assessment information from pre-K through post-secondary levels.

State FERPA-Utah Code §53A-13-301 and 302. These provisions in state law have not changed recently. They require public schools to have express, written parental permission before public school employees use a survey, questionnaire, test, examination or evaluation with student(s) to explore specific protected issues. Those issues include students' mental or psychological problems, students' sexual behavior, orientation or attitudes, students' illegal, anti-social, or self-incriminating behavior, religious beliefs and family relationships. This law also requires school employees (using their professional judgment) to notify parents if a school employee "believes" that a situation presents a serious threat to a student. Clearly these provisions require vigilance, caution, and good judgment by school employees in discussing personal issues and topics with young people.

Both laws are important. Both protect the privacy of students and families in different ways. The parent's right to provide express written consent for a school counselor to discuss specific issues with a student does not give the same parent the right to prohibit a school from using the student's *de-identified* data, aggregated with hundreds of others students' data, to evaluate curriculum programs and improve instruction in public schools. More information is available about student records and student/family protection through careful, informed student/school employee interaction at: <http://www.schools.utah.gov/law/Papers-of-Interest.aspx>

YOUR QUESTIONS

Q: How long can I teach my class after school is over? My principal said I can't keep students even five minutes after class is over, is that right? – *Educator with More to Teach*

A: There is no state school board policy on how long students can and cannot be kept after school is over. Each local school board is directed to have a policy on detaining students after regular school hours. The policy should apply to elementary students, grades kindergarten through sixth grade. Notice must be given to the parent or guardian of a student prior to holding the student after school (Rule 53A-3-415).

Q: My son plays football and is very talented. Just last week one of his coaches made some inappropriate jokes that were sexual and derogatory. They don't have educator licenses,

UPPAC CASE OF THE MONTH

There's nothing much more injurious to the public education system than a front-page story about a teacher who is sexually involved with his/her student. Even if the student is an "adult" legally, the public doesn't take too kindly to teacher-student relationships. And with good reason. Teacher-student, doctor-patient, therapist-client, clergy-parishioner relationships are built on a basis of authority and trust, the violation of that trust is an egregious ethical violation. Consider, too, the vulnerability of the student, the patient, the client, and the parishioner, and the dependence on the respective person in authority. The parishioner relies on the clergy for absolution of sin; the client on the therapist for mental and emotional healing; the patient on the doctor for physical healing; and the student on the teacher for security, educa-

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but are still teaching in the school. Something should be done!—*Parent*

A: Something should be done! Using lewd or suggestive language does constitute educator misconduct and should be reported immediately to the principal and school administration. Your principal needs to be made aware of any issues or concerns you as a parent may have. You may also want to contact the school district office that reviews employee misconduct. The Professional Practices Advisory Commission cannot take action against district and school employees who do not have educator licenses.

Q: I have been issued a letter of reprimand by UPPAC. I was applying for jobs and didn't know how to answer the question, "has your license ever been investigated" on the application. I feel like saying yes would be a deterrent from me getting a job. Can I check "no"? —*Educator Applying for Jobs*

A: If you HAVE been issued a UPPAC Letter of Reprimand (or other UPPAC discipline), you should answer the question honestly and succinctly—or risk the additional disadvantage of lying on an employment application. Even though the Letter of Reprimand does not affect employment you should answer the question *as* asked—but may explain if there was license action and the letter has been removed or the license reinstated. This would give helpful information to the hiring school district or school and be fairer to you, the applicant teacher.

Q: So how many days can a student (9th-12th) miss from school and still

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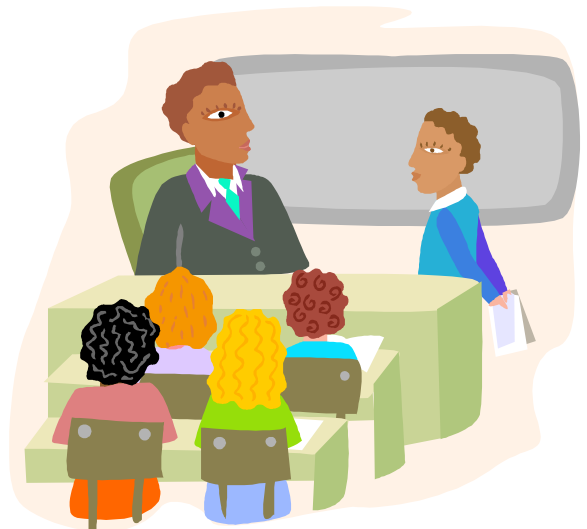
tion, and for something more tangible—for grades. Involvement with a person of trust has the potential to cause confusing emotions and damaging impact. Even if the "student" is 18.

Beyond sexual relationships, the Utah Educator Standards expressly prohibit the solicitation, encouragement, or consummation of ANY inappropriate relationship, written, verbal, or physical, with a student or minor (R277-515-3C(14)). The Standards state, "A professional educator shall not make inappropriate contact in any communication—

written, verbal, or electronic—with minor, student, or colleague, regardless of age or location." (R277-515-3C(16)) While the rule does not expressly define "inappropriate", it is safe to say that if the teacher wouldn't want the student's parents, her principal or superintendent, her significant other, or the media knowing the substance of the communications and relationship she is having with the student, it is not appropriate.

Some examples of relationships between students and teachers that have been deemed inappropriate by UPPAC include: allowing a student to spend time in the teacher's home just to hang out and watch TV; placing teacher's feet/legs on a student's lap and allowing a foot/leg rub; teacher taking student out to dinner; teacher calling, texting, emailing, instant messaging the student about anything non-school related; teacher joking around with a student about sexual innuendos; teacher sending a picture of herself to a student—clothed or unclothed; teacher giving a massage to a student; teacher allowing a student to move in with a teacher; teacher allowing a student to stay late in your office just to talk; and teacher pulling a student outside of other classes to hang out. This list is not exhaustive, but it covers some of the boundary-crossing activity UPPAC has seen over the past 12 months. It should go without saying that holding hands, kissing, or having any sexual contact with a student is absolutely prohibited.

Developing healthy positive relationships with students is one reason most educators become teachers. There is a way to develop those relationships while not violating the teacher-student roles. No matter how intimately a teacher may find he works with students as part of his job responsibilities, there is still professionalism that all educators are expected to honor.



receive credit? If the class is a lab class, meaning it is performance based, how does that weigh into the decision? –*UtahPublicEducation.org Reader*

A: The State sets no required attendance level for a student to receive credit for a course or class. There is a presumption at the State level that academic grades should reflect academic accomplishment or achievement. Consequently, a student's grade should represent the work he has done—assignments, tests, group projects, papers, etc.—it should NOT be based on his attendance in a class. Even so, a Spanish class or a PE class or a biology or physics class that includes labs or even a psychology class that requires student interaction and peer discussion could justify a certain level of attendance which could be part of the student's grade. This might not be true for the math genius in an algebra class. In addition, most court cases conclude that teachers should provide make-up work—at least for legitimate absences (which could include, however frustrating for overwhelmed teachers, “parent excuses”). But the make-up work does not have to be exactly what was required during the class—the make-up requirement for a 10 question quiz could be a 5-page paper on the same subject. Also, in this era of parent choice—coupled strangely with teacher accountability—teachers should be more prepared than ever to make their classes meaningful and necessary to successful student achievement. If a student can master a subject (or even earn an A grade) and still miss class often, what does that say about the teacher's effectiveness?

PUBLIC SCHOOL PIANO TEACHER, ACCUSES A RIVAL TEACHER

It all started with a piano and two music teachers at a public high school. The case has the added intrigue of boundary violations, internal school drama and a false or exaggerated report of misconduct about a colleague.

We are thinking—what fortunate high school has “piano teachers?” New Jersey does. Mr. Paraskevopoulos (Mr. P) was a “certificated” (licensed) music teacher at a New Jersey high school. A younger music teacher and colleague criticized Mr. P's piano technique. Mr. P took offense and complained to the principal. When the principal did not intervene, Mr. P added that he had concerns over his colleague's “excessive touching of students.” The principal made the required report to Family Services. Mr. P, realizing that he had gone too far, tried to retract his accusations, but the investigation had begun. Family Services found the allegations unfounded and the district responded by requesting and receiving Mr. P's resignation. The district also reported the misconduct to the Board of Examiners (New Jersey's UPPAC) where the Board found there was cause to consider licensing action against Mr. P for “conduct unbecoming.”

Under New Jersey's law, “conduct unbecoming” includes behavior that “has a tendency to destroy public respect” for those public employees or to destroy “confidence in the operation of” the schools. The State asks about the certificate holder's fitness to discharge the duties and functions of one's office or position. A community must have confidence in its public school employees—with specific concern for licensed or certificated staff. The State put the issue to an Administrative Law Judge (ALJ). The ALJ found that Mr. P's actions did NOT rise to the level of conduct unbecoming. Though the teachers argued heatedly, no students were present. Mr. P presented documentation that his accusations against the fellow teacher were legitimate, because he had previously reported concerns about the younger teacher. But he admitted he likely overstated his concerns due to the younger teacher's hurtful criticism. The State and district were still concerned that the school was “disrupted” due to the subsequent Family Services investigation.

The Board agreed with the ALJ's findings, to some extent, but came to a different legal conclusion: “The damage [Mr. P] inflicted on [his colleague's] reputation and the potential harm he could have caused . . . should not be minimized simply because he acted in a fit of pique and later attempted to retract his allegations.” Mr. P's actions resulted in a Family Services investigation that disrupted school operations and reflect negatively on Mr. P's ability act as a positive role model to both students and colleagues. The Board of Examiners upheld the original decision to suspend Mr. P's certificate for six months.

